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Structures of Confinement in Nineteenth-Century Asylums, using England and Ontario as a Comparative Study

by Peter Bartlett*

Traditionally, historians of the care of the insane have understood their work as a branch of medical history. Whether one understands this in the old style, where doctors were in the business of bringing light into the darkness and Tuke and Pinel struck the chains off the insane at the York Retreat and the Bicêtre respectively, or the more sceptical view of the more recent revisionist histories, the history of the asylum has been the history of mad doctors,¹ or at the very least, of

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¹ironically, since Tuke himself was of course not a doctor.

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treatment.

My interest is instead the administrative structures of nineteenth century asylums. As Clive Unsworth and Phil Fennell have pointed out, law has a constitutive role in the care of the insane (Fennell, 1986; Fennell, 1996, esp at Introduction; Unsworth, 1987; Unsworth, 1993). This may occur through the mediation of rights-based and medical discourses and the consequent creation of a common framework for the understanding of insanity in a legal context. It also occurs in the law's construction of processes by which, and institutions in which, people who are thought to be insane are to be dealt with. Admission structures, management structures, funding structures, relations between insane persons and the law, structures of professionalization, and the substantive line between sane and insane are thus matters of law as well as medicine. These are geographically specific and historically contingent. The development of medico-legal discourse will depend on localized histories of medicine and law in individual jurisdictions concerned. While this should perhaps appear obvious, psychiatric historians have generally shown a marked reluctance to grapple with the relevance of specific administrative structures in their work.

This in turn opens a new approach for the comparative study of asylums. If law formed a framework, both conceptually and practically, the study of comparative law of asylums must shed light on differences and similarities of forensic psychiatry between jurisdictions. In this paper, the legal structures of public asylums in Ontario and England in the mid-nineteenth century are taken as a case study of this approach.

Insofar as the structures are different, and it will be argued that they are significantly different, the underlying question of this paper is then a query of the degree to which the institutions were understood in the same way in the nineteenth

P. Bartlett/Nineteenth-Century Structures of Confinement, p.3 century, and can be understood as comparable by historians today. To overstate in order to make the point, the issue is whether it is appropriate to refer to 'the asylum' as a coherent and consistent concept between jurisdictions in the nineteenth century. The answer may well be in the affirmative, but it will become clear that differences in administrative structures are significant, and as instructive as similarities.

The Legal Structures of Asylum Administration

On a superficial level, there are similarities between the histories of asylums in England and Ontario (called 'Upper Canada' or 'Canada West' while still a colony, until 1867). The development of the public asylum system was similarly roughly contemporaneous between the jurisdictions. In England, legislation in 1808 permitted the construction of county asylums: 48 Geo III c. 96. A period of much intensive expansion was introduced by 1845 legislation, which made asylum provision mandatory: 8/9 Vic c. 126. The numbers confined jumped from roughly 6,000 in 1845, to over 17,000 by 1860, to almost 53,000 by 1890.² In Upper Canada, the enabling legislation to construct an asylum was passed in 1839: 2 Vic. c 11. While a purpose-built facility did not open until 1850, a temporary asylum operated out of the former York Gaol commencing in 1841. Consistent with the English pattern, the nineteenth century saw a marked growth in asylum provision in Upper Canada/Ontario, not merely with expansion of the Toronto facility, but with the addition of two additional asylums in the 1850s, a third in 1861, and two more in the 1870s. By 1904, there were a total of ten asylums in the province.

The broad legislative frameworks in the two jurisdictions

²Source of statistics: Annual Reports of Lunacy Commissioners.

P. Bartlett/Nineteenth-Century Structures of Confinement, p.4 bear a certain similarity. In both cases, the broad packaging of lunacy law was similar: a set of acts for criminal lunatics; a combination of acts and common law governing chancery control (appointment of committees for the person and the estate); separate acts regulating private madhouses; and a fourth strand (most important here) regulating publicly funded asylums. In each case, public asylums had their own distinct institutional character: they weren't gaols; they weren't hospitals; and they weren't workhouses. In each case--starting in 1845 in England and 1857 in Upper Canada independent inspectorates were formed to oversee the functioning of the public asylums.

Once the specifics of those structures are examined more closely, however, the similarities are shown to be more apparent than real. This paper examines the differences in the context of the public asylums-- county asylums in England, and the publicly owned Provincial Asylum, with its main branch in the City of Toronto, in Upper Canada. At issue are both questions of overall administration, and admission and discharge of inmates.

Overall Administration

The English county asylum is bound up in the history of English poor law (Bartlett, 1999a; Adair, 1998). Its origin is under the so-called "old" poor law, the law which existed prior to the sweeping reforms of 1834. The eighteenth-century poor law had distinguished paupers "who, by Lunacy, or otherwise, are furiously Mad, and dangerous to be permitted to go abroad": ¹(1714), 36 G III, c. 23. Where other paupers refusing to work ("sturdy beggars" and "incorrigible Rogues") were to be whipped, these lunatic paupers were to be removed to a place of safety. The statutes did not designate such places, however, and it would seem that gaols and poor law

P. Bartlett/Nineteenth-Century Structures of Confinement, p.5 facilities were commonly used in this regard (Suzuki, 1991; Suzuki, 1992).

As matters of lunacy became of more general concern, at the end of the eighteenth century and the beginning of the nineteenth, this minimal statutory provision was supplemented by legislation in 1808 allowing (and requiring, commencing in 1845) counties to construct asylums for their lunatic poor. The administrative nature of these facilities reflects the structures of the old poor law: they were to be run by the county Quarter Sessions, the people who were in charge of the rest of the poor law (including its houses of industry and outdoor relief).

Quarter Sessions, usually through an asylum committee, thus ran the English asylums. It was they who organized construction and capital improvements, framed the by-laws, and hired key staff including the medical superintendent. They might even be responsible for defining the curative régime which was at the core of asylum treatment. Thus the famous moves toward moral treatment at Hanwell appear to have been instigated, supervised and controlled by the Visiting Justices, not by the medical superintendent, John Connolly, who has generally been credited with them (Suzuki, 1995).

Poor law administration was radically amended in 1834. No longer would the administrative units be parishes, Justices of the Peace, and Quarter Sessions; instead, England and Wales were re-divided into roughly 600 "unions", each administered by a Board of Guardians with a small professional staff. Overall national administration was overseen for the first time by a Poor Law Commission, with a small staff of inspectors. Where the old poor law had been based in an eclectic collection of mechanisms, the new was to be based in the punitive workhouse.

Notwithstanding its poor law roots, the county asylum system was not affected by the 1834 Act: asylums remained county institutions, run by Quarter Sessions. That continued throughout the nineteenth century, even after 1845, when a specialized and central Lunacy Commission is formed to oversee matters of lunacy in the country.

While the 1834 poor law did not directly affect asylum administration, it (and related reforms) did have very important indirect effects. The 1834 poor law had deprived local Justices of the Peace of much of their power in matters of poor law. The county asylum was one poor law institution which remained in their control. In part as a result, the asylum system flourished. In 1832, there had been thirteen county asylums. By 1858, that number had tripled, and by 1890, the number had reached sixty-six. Certainly, this is in part due to the 1845 legislation, which had made asylums mandatory, but the Justices did not merely build asylums; they expanded existing ones. In 1856, seventeen of the thirty-two asylums open at that time had some form of building programme in operation (Lunacy Commission, 1857). By 1863, asylum relief of the poor was costing over half a million pounds per year, more than double the amount spent on all other poor law medical relief. By 1877, they were more than treble.³ In a matter of turf war, the Justices can be seen as protecting their patch.

The "patch" is not to be perceived in simply administrative terms. It is also a matter of poor law theory and understanding. The new poor law was to be deliberately harsh. The mechanism at its heart was "less eligibility": due

³Figures drawn from Local Government Board, (1890), Appendices f(116) and F(118).

P. Bartlett/Nineteenth-Century Structures of Confinement, p.7 to the tediousness of workhouse régime and the Spartan nature of its accommodation, no one would choose to live in a workhouse, if they could survive outside it. The asylum by comparison often portrayed itself in a very different light. The imagery was of ample and healthy food, respite and cure, beautiful buildings and views, and brass bands and bowls on the lawn on warm summer evenings. The accuracy of these images is of course open to question, but the imagery is unmistakable: this is not the punitive workhouse. At play here is the continuation of an older, Tory notion of poor law involving kindness and charity, in the face of an onslaught from Malthusian-Benthamite-Whig forces of social policing.

This old Tory imagery is not universal, of course, as one might expect given the diversity of the Justices themselves.⁴ At other times, the asylum would thus emphasize its efficiency, rivalling the Benthamites on their own terms. And periodically, it would claim a public health role for itself, consistent with one of the other, less punitive but equally important characteristics of the new poor law, such as vaccination, midwifery for the poor, and, by the later nineteenth century, public housing (Bartlett, 1999b). Nevertheless, these debates revolve around the discourses of the poor law.

Equally significant in understanding the English asylum

⁴As the size of Quarter Sessions benches increased, the numbers of local landed gentry were increasingly insufficient to fill the posts. Clerical appointments, representing roughly a quarter of England's Justices in the early 1830s, ceased to be appointed in 1835 (Moir, 1969, 107). Justices were therefore, of necessity, increasingly drawn from the ranks of local industrialists. In the Black Country in Staffordshire, for example, gentry represented only eleven per cent of the appointment; masters of the local iron and coal industries alone accounted for more than fifty per cent of appointments that year (Philips, 1976)

P. Bartlett/Nineteenth-Century Structures of Confinement, p.8 movement are the debates surrounding centralization of government in the nineteenth century. The issue surrounded the rights of local aristocrats, gentry and propertied classes (which in turn comprised the Quarter Sessions) to authority in their own local jurisdictions. This was at loggerheads with the Benthamite Whig notion of effective government at a national level, based in London. Not even poor law, let alone lunacy law was removed from local administration completely, since even Boards of Guardians were local bodies, elected by local ratepayers.

The fight to retain local authority is important in understanding not only the attitudes of local Justices, but also the statutory role and the behaviour of the central Commissioners (and particularly the relatively tactful Commissioners in Lunacy). Regarding county asylums, the Lunacy Commission's powers were effectively limited to checking the paperwork of admissions and reporting on conditions: they did not have the authority to discharge an individual as cured, nor did they have authority to require changes in routine, staff, or the fabric of the buildings. When capital improvements were proposed, they did have the right to comment on the proposals; but they could not require alterations to the plans. That, along with the general enforcement of the County Asylums Act, rested with the Home Secretary, (a Cabinet minister), who was generally aware of the potential political repercussions of direct challenges to the local authorities. If the locals refused to co-operate, there was not much that the Commissioners could do other than complain, and this was not necessarily successful. Thus the City of London did not build a lunatic asylum, much to the chagrin of the Commissioners, for more than twenty years after they became mandatory in 1845.

The situation in Upper Canada was quite different. Certainly, there are indications that the initial legislative

P. Bartlett/Nineteenth-Century Structures of Confinement, p.9 forays into lunatic asylums involved provision for the poor. Thus Quarter Sessions in the Home District, in the vicinity of Toronto, were permitted by legislation in 1830 to provide for maintenance charges of the destitute insane, "having been charitably received into the Gaol": 11 G IV c. 20. Certainly, following its foundation in 1841, the Provincial Asylum was the prime locus of care for the insane poor of the region. It was not, however, a poor law institution in the English sense. Upper Canada never adopted the new poor law (Smandych, 1989, ch. 8; Smandych, 1981, 124-39). Where English county asylums were designed for pauper inmates to the near-exclusion of others, the asylums in Upper Canada never had this as a formal restriction, and through the mid-century generally contained a significant number of paying patients.

There was similarly no fight to be fought between local and central administration in colonial Canada. This may no doubt in part be a question of scale, but with a population of approximately 400,000 in 1838 (Craig, 1963, 262), this should not be taken as a complete explanation. It also reflects a question of colonial mentality and political history. In a relatively newly colonized region, there was no obvious social parallel to the old landed gentry of English society. Responsible government was only achieved in the 1840s; before that time, the Governor General actually governed, subject to instructions not from the local assembly, but from London. The colonial government was thus in a more central role in administration than its English counterpart. The politics of the colony in this period focused not on the power of local élites, but on the balancing of power at the central level, and specifically the battle to ensure that the Governor exercised his power only with the consent of the legislative assembly. It is in this context that the following 1844 comment of the Toronto Globe is to be read:

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We understand that the Board of Commissioners [appointed on advice from the Cabinet] is very harmonious and zealous-- and by economy and punctuality have at once retrieved the financial credit of the Institution, and greatly reduced expenditure. Some additional attention also is about to be employed in the medical department-- three physicians being engaged as visiting medical commissioners, whose duty it is to report to the government upon the treatment pursued in the establishment.

While upon this subject we may state that there are abroad in the city painful rumours of the Institution being disturbed (just as other governmental departments are, and indeed as is the Government itself) by his Excellency attending to *private* representations rather than such as are *official* and *responsible*. An officer of the establishment who is at war with all the servants and is very unpopular with the friends of the patients and by the inhabitants of the city, is encouraged by the Government, in direct opposition to reports made by the Board, but in accordance with his own private correspondence endorsed by an individual mixed up with him in pecuniary interests. We hope it is not true that the Board is likely to *resign*-- though we are fully convinced that if his Excellency continues to pursue a course of listening and favouritism, he will get all the departments and institutions of the Government into the confusion which the Executive has already brought to. (6 August 1844)

Where the English asylum in this period can be seen as lying at the intersection of local and central interests, the asylum

P. Bartlett/Nineteenth-Century Structures of Confinement, p.11 in Upper Canada was about the politics of parliamentary process itself.

In Upper Canada, the medical superintendency was a patronage position. This could no doubt be true in England as well, but the routes of patronage reflected the administrative structures in question. Thus in Upper Canada, the patronage was based in the colonial government, not in the county squirarchy. The first Upper Canadian medical superintendent had been a candidate for the House of Assembly in 1834, and it would appear received the office through the influence of the colony's first Vice-Chancellor, Robert Sympson Jameson. He was forced to resign due to injury in 1844, and was replaced by Walter Telfer, the individual who, it would seem, had directly or indirectly been bending the ear of the Governor, such as to induce the passage from the Globe, noted above. He lasted but three years, when (allegedly as the result of trumped up charges against Telfer) the reformers successfully got their candidate into the job, one George Hamilton Parke. Parke was replaced relatively promptly by John Scott, whose father-in-law, another Reformer, actually sat on the governing board of the asylum. This nepotism eventually led to his downfall, along with the public discovering that dissections were happening in the facility.

John Workman was appointed medical superintendent in 1853, a post he held for twenty-two years. Born in Ireland, Workman received his medical training at McGill University, graduating with an M.D. in 1836. At that time, he moved to Toronto, left medicine for a decade and became involved with city politics as an advocate of the Reform cause. He returned to the practice of medicine in 1846, eventually becoming a lecturer in the Toronto School of Medicine. When John Rolph, the head of that school, became a cabinet minister, Workman became superintendent of the asylum, notwithstanding a conspicuous

P. Bartlett/Nineteenth-Century Structures of Confinement, p.12 lack of experience in dealing with cases of insanity in his medical career.⁵

The Upper Canada asylum was thus not about a fight between ancient local interests and encroaching central government. Instead, it was about political machinations at the central level. These factors can be seen as depriving the asylum of its status in England as locus of dispute between local and central interests. Instead, Upper Canada looked to American models of asylum administration.⁶ Consistent with the usual American model, the asylum was controlled directly by the provincial government. Originally, this involved the Executive appointing a Board of Commissioners, which in turn took day-to-day decisions regarding staffing and management: 2 Vict. c. 11, s. 2, 3. By the 1850s, even this buffering body had been removed:

the asylum and its effects were vested in the Crown, and the provincial executive appointed both the medical officer and the bursar of the institution: 16 Vict (1853) c 188. Where the Upper Canadian asylum did not follow a common practice in America of providing the medical superintendent with fixed-term tenure of office, it did provide duties for the position in the legislation. As well as providing a variety of reports to the Government and the asylum inspectors, the medical superintendent was to "direct and control the medical and moral treatment of the patients,-- hire and discharge from time to time the Keepers and Servants, -- watch over internal management, and maintain the discipline and due observance of

⁵Regarding Workman's biography, see Raible, 1994, 388; Brown, 1990; and Simmons, 1982, ch. 5.

⁶On behalf of the Assembly of Upper Canada, Dr. Charles Duncombe visited institutions in the United States to examine their systems of asylum administration in 1836 (see Simmons, 1982, 2; Smandych, 1981, 49-52). Massachusetts seems to have been a particularly important model for Duncombe.

P. Bartlett/Nineteenth-Century Structures of Confinement, p.13
the By-laws of the Institution": 16 Vict (1853) c 188, s. 4.

This role is considerably greater than the English equivalent, where overall control and hiring and firing was the role of the asylum Justices. The Upper Canadian medical superintendent enjoyed a freedom and an authority unknown to his English counterpart.

The system in Upper Canada had other structural factors which distinguish them from its English counterpart. The centralized management structure allowed for a different sort of rationalization of asylums. As the number of asylums in Upper Canada grew, they were organized around types of patient served: Toronto, for the curable; and London and Orillia for the incurable; in addition to Rockwood in Kingston for the criminally insane. The losers in this organizational structure were idiots and imbeciles: they were not admissible to asylums in the province until 1867, and even then were not admitted to the primary asylum in Toronto (Simmons, 1982, 15). This substantive categorization between facilities did not exist except in quite unusual circumstances in England until considerably later, when various asylums might be constructed in each county.⁷ A caveat is therefore appropriate for people doing comparative work between English and Ontario facilities: they are not necessarily serving the same populations.

The 1850s also saw the introduction of centralized inspections of asylums. The administrative organization of these inspections suggests a somewhat different way of thinking about lunacy from the English approach. The English, had an inspectorate devoted to madhouses and asylums, with a power to

⁷The non-specialization in England applied even for the criminally insane until well into the nineteenth century. Bethlam Hospital in London did take more than its share of this group, but it did not have sufficient accommodation for all criminal lunatics, and many were kept in county asylums until the opening of Broadmoor in 1863.

P. Bartlett/Nineteenth-Century Structures of Confinement, p.14 visit insane in workhouses. The Canadian solution combined asylum and private madhouse visitation with inspection of other institutions: hospitals, prisons, gaols, and penitentiaries. This connection with the criminal system is reflected in admission policies, where a considerable number of insane were confined through a quasi-criminal process, notwithstanding they had committed no crimes. These people were sent initially to the gaol, from which they might or might not be removed to the asylum. Thus where in England, the decision regarding confinement would be between the workhouse and the asylum, in Upper Canada, it would be between the gaol and the asylum. Lest this be considered a marginal question, it might be noted that in 1861, almost two thirds as many insane persons were received into the gaol, from whence they might or might not be moved on, as into the Provincial Asylum.⁸

This was an inspectorate with some teeth. Like its English counterpart, it was free to report on a wide manner of things; unlike its English counterpart, it had control over the writing of by-laws for the asylum, a role in the control of the Justices in England. Matters of capital expansion and staffing were in the control of the executive directly, although the views of the inspectorate were extremely significant for the appointment of funding. As the inspectorate reported directly to the funder (ie., the executive of government), this is perhaps not surprising.

What we see in examining the overall administrative structures is a highly localized system in England, and a much more centralized focus in Canada. Where the English system prescribes little formality to the role of medical officer

⁸130 insane persons were received into Upper Canadian gaols that year, compared to 204 in the asylum: Board of Inspectors of Asylums, (1861). Some of these would be removed from the gaol to the provincial asylum, however: see below.

P. Bartlett/Nineteenth-Century Structures of Confinement, p.15 giving authority instead to the Justices, the Canadian divides authority between the inspectorate and the role of the medical superintendent, as defined by statute. Where the alternative to the English asylum is the workhouse, in Upper Canada, it is the gaol.

Administration of Admissions and Discharge

Differences between admission processes in England and Upper Canada cut rather differently than the overall structure of asylum administration, since here the administrative support of the new poor law was essential to the growth and success of the English asylum system. The English admission process in theory had poor law medical officers combing the shires looking for insane persons needing the assistance of the asylum. The reality was admittedly somewhat different, but the poor law administration remained pivotal. Generally, some crisis in the domestic sphere (or, less frequently, regarding an inmate of the workhouse) would trigger an approach to the local poor law relieving officer by the insane person's family, or some other similar interested individual (Wright, 1994, ch.2; Wright, 1996). At this point, the individual's insanity enters the public sphere. The relieving officer had three options if relief was to be granted: asylum admission, workhouse admission, or a grant of outdoor relief (a handout). If asylum admission were a serious consideration, a doctor would become involved at this stage. After 1853, when the law was changed to allow them to sign admission certificates (16/17 Vic c. 97), the doctor was almost always the poor law medical officer. If the admission was to be proceeded with, a local Justice of the Peace would be approached to sign an admission document. Once that happened, the asylum was at least in theory obliged to take the individual.

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The important thing to recognize here is the centrality of the new poor law administrators in the carriage of the application. Effectively, these people administered the Asylum Acts. In theory, anyone could approach a Justice of the Peace with information about an alleged lunatic requiring confinement, but in practice this virtually never happened.

The result of this is a peculiar ambiguity in relations between the Justices of the Peace and the new poor law. Where on the one hand, the asylum was a space where Justices protected their jurisdiction in poor law matters, and where old poor law doctrines were allowed to retain some sway, in matters of admission it is clear that the system was unadministrable on the scale upon which it developed without the routine involvement of poor law staff.

The asylum doctors in the English system were notably powerless. They were specifically precluded from signing admission forms to their own asylums; and in theory they could not refuse people once the relevant forms had been signed. They took who they were given. Similarly, discharges of patients were at the behest of the Asylum Committee of Quarter Sessions. No doubt that committee would often take the advice of their medical superintendent in these matters; but they were not required to do so. In the English system, asylum superintendents may have had considerable control over the inmates during their stay in the asylum, but they had little control over who was in the asylum.

Upper Canada never adopted the new poor law (see Smandych, 1989, 227-235), and as a result this professional level of administration was completely absent. There were instead two sets of statutes which allowed confinement of individuals. First was a civil stream. This allowed confinement of people upon the signature of three doctors and the local mayor or

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reeve that the individual in question was a lunatic. Unlike
the English system, the criminal confinement rules had clauses
regarding confinement of those who were insane, but had not
been convicted of criminal offences. A Justice of the Peace
could order the confinement in the local gaol of any person
"apprehended under circumstances that denote a derangement of
mind, and a purpose of committing some crime, for which, if
committed, such person would be liable to be indicted" without
any formal medical involvement: 22 Vic. c. 109, s. 7. By 1860,
almost a third of the inmates of the asylum were admitted
through this stream.

The admission processes thus lacked the professional role
of the poor law staff. The effect of this varied according to
which of the two Upper Canadian admission processes was used.

In the standard civil sphere, the lunacy administration
appears to remain largely in the control of the family, or
other similarly placed person. It is they who would approach
the relevant doctors and mayor, and negotiate with the head of
the asylum for the admission of the individual. In other
words, it was they who had carriage of the application. The
English system required only one doctor to sign the form for a
pauper admission, and by mid-century supplied an available
medical expert in the personage of the poor law medical
officer, a poor law officer employed by each union and thus
readily available. The Canadian required three medical
signatures, and quite apart from the resulting expense which
would fall on the family member, it would seem that
periodically, three doctors were simply not to be had, and
individuals were moved into the quasi-criminal admission
structure (Mitchinson, 1988, 98).

In the civil stream, it was also the families who were in
charge of organizing payment for the maintenance of the insane

P. Bartlett/Nineteenth-Century Structures of Confinement, p.18 person. In theory, this meant posting a bond amounting to \$2.00 per week, going up to \$2.75 in the 1870s. Such private payment might suggest a parallel with the English private asylum system, but too quick a judgment here may mislead, for Ontario too had a separate system of private asylums in the private sector. The difference remains that where the English public asylum was designed for the poor, and those within it were virtually all paupers, the Ontario public asylum contained a non-negligible share of paying customers.

In practice, other payment possibilities were available to the Ontario family. In some cases, the inmate's municipality could be convinced to pay the charge; and in others, it was provided centrally. This too represents a point of distinction from the English system. In England, the costs of those admitted through the poor law to county asylums would be paid by the inmate's parish to 1862, and by his or her poor law union thereafter. In Upper Canada, the decision as to public funding by central government rested with the Provincial Secretary, upon the recommendation of the Inspector of Prisons and Asylums. Again, and unlike the English system, the inspector appears as being a figure with real power, a pivotal point of connection to central government. Once again, however, the application process to this individual would be in the control of the family of the inmate.

This only applied if the individual were admitted through the civil stream. If the quasi-criminal stream were used, the process would have some resemblance to the English. Effectively, the state actors, mainly Justices of the Peace, would consider whether the statutory criteria were met, and order the confinement of the individual, with payment automatically through state channels. Here again, however, the professional screening role of the poor law authorities which occurred prior to the application to the Justice in England,

P. Bartlett/Nineteenth-Century Structures of Confinement, p.19 was absent in Canada. And where medical appraisal was a requirement in the English system, it was not in this Upper Canadian process.

These processes left the asylum doctor again in a stronger position than his English counterpart, for in either case, he was not obliged to admit the individual to the asylum. The civil papers merely mandated admission; they did not require it; and the quasi-criminal process required confinement in a gaol. While transfers of these people were certainly accepted to the asylum from gaols in appropriate circumstances, they were not legally required, and local jails continued to have significant numbers of insane in them throughout the period. This flexibility further privileged the medical view, and buttressed the role of the medical superintendent. If the asylum was to stream itself according to its objectives, essentially being concerned with lunacy not idiocy and with curability, at least at the initial stages of the disease, such discretion was a necessity, since such standards would be difficult to enforce in all the doctors and Justices in the territory.

It is an open question how much these powers of the superintendent were merely illusory. Certainly, some insane individuals remained in the jails; but when the curative role of the asylum fell into conflict with its custodial role, considerable pressure might be placed on the superintendent. Thus in 1863, when Superintendent Workman attempted to deny admission to four incurable women, he was roundly chastised by the Board of Inspectors, on the basis that the women were dangerous and that it was better to expose the 350 patients who are already in the institution to increased overcrowding, the board concluded, `than to expose families, and society itself, to the dangers attendant on allowing lunatics, curable or incurable to go at large, in view of the frequent and dreadful

P. Bartlett/Nineteenth-Century Structures of Confinement, p.20 occurrences of which they are the cause.'⁹

The asylum superintendent also had some additional power regarding releases from the asylum. While he, like his English counterpart, would be placed in a difficult position if a privately funded patient's maintenance payments ceased, for those funded by the central state, there is no indication that the state pressured regarding discharges.¹⁰ Instead, regarding those admitted under the civil stream, it would appear that they were discharged when he pronounced them cured. For those under the quasi-criminal stream, release required the signature of the Lieutenant-Governor (who also, formally, signed admission certificates); but here again, it would appear that the view of the medical superintendent of the asylum was pivotal. By the mid-1870s, he was required to sign in support of the application for discharge.

Conclusion

From this comparison, the differences between English and Upper Canadian asylums seem as remarkable as the similarities.

In England, power rested in the poor law officers and local justices; in Upper Canada, it rested with the asylum doctor and the inspector. This is reflected in the status awarded to the medical superintendents in each context. Workman was accorded kudos by his profession. He became president of Medical Association of Canada, president and founding member of Ontario Medical Association, and president of Medical Society of Toronto. No English asylum superintendent of the period received comparable recognition within the broader medical

⁹Cited in Brown, 1990, 1125. Regarding dangerousness as criterion for admission, see also Mitchinson, 1988, 98-101.

¹⁰The inspectorate did however pressure individuals to provide private payments for relatives, which may have had comparable indirect effect (Inspector of Asylums, 1869, 27).

P. Bartlett/Nineteenth-Century Structures of Confinement, p.21 profession. Indeed, even when they formed an organization, the English alienists were largely unable to move their professional colleagues or the general public until the twentieth century (Turner, 1991). In addition, pressures regarding the role of central government worked differently; in Upper Canada it was desired, rather than being perceived as a threat, resulting in an inspectorate with a role internal to the actual administration of the asylum system.

To compare English and North American asylums is thus a delicate business. They functioned differently, and reflected notably different norms of social governance. The focus on doctors and matters of treatment theory by historians of medicine has tended to sideline these issues of administration.

If serious comparative work is to be done, however, matters of administrative structure must be understood as a central part of the comparison.

References

Adair, R., Forsythe, W., and Melling, J. (1998). A Danger to the Public? Disposing of Pauper Lunatics in late-Victorian and Edwardian England: Plympton St Mary Union and the Devon County Asylum, 1867-1914. *Medical History*, 42, 1.

Bartlett, P. (1999b). The Asylum and the Poor Law: The Productive Alliance. In Melling and Forsythe, *Insanity, Institutions and Society-- New Perspectives on the Social History of Madness*, Forthcoming London: Routledge.

Bartlett, P. (1999a) *The Poor Law of Lunacy: The Administration of Pauper Lunatics in Nineteenth-Century England*. Forthcoming London: Cassell.

Board of Inspectors of Asylums, Prisons &c. (Canada). (1861) *Second Annual Report, 1861*, Sessions Papers, 1862, vol 4, no 19.

Brown, T. (1990) Entry on Joseph Workman. *Dictionary of Canadian Biography* Toronto: University of Toronto Press.

Craig, G. (1963). *Upper Canada: The Formative Years 1784-*

- P. Bartlett/Nineteenth-Century Structures of Confinement, p.22 1841. Toronto: McClelland and Stewart.
- Fennell, P. (1986). Law and Psychiatry: The Legal Construction of the Psychiatric System. *Journal of Law and Society*, 13, 35.
- Fennell, P. (1996). *Treatment without Consent: Law, Psychiatry and the Treatment of Mentally Disordered People since 1845*. London: Routledge.
- Inspector of Asylums, Prisons &c. (Ontario). (1869). Second Report, 1868-9. *Ontario Sessions Papers*, vol. 1, no. 4.
- Local Government Board (England and Wales). (1890) *Twentieth Annual Report of the Local Government Board*, PP 1890-91, [6460] xxxiii 1.
- Lunacy Commission (England and Wales). (1857). *Eleventh Annual Report of the Lunacy Commissioners*, PP 1857, 2nd sess., (157) xvi 351.
- Mitchinson, W. (1988) Reasons for Committal to a Mid-Nineteenth-Century Ontario Insane Asylum: The Case of Toronto. In Mithinson and McGinnis, eds., *Essays in the History of Canadian Medicine*. Toronto: McClelland and Stewart, 88.
- Moir, E. (1969) *The Justice of the Peace*, Harmondsworth: Penguin.
- Philips, D. (1976). The Black Country Magistracy, 1835-60. *Midland History*, 3, 161.
- Raible, C. (1994). 'Your Daughter & I Are Not Likely to Quarrel': Notes on a Dispute between Joseph Workman and William Lyon Mackenzie. *Canadian Bulletin of Medical History*, 11, 387.
- Simmons, H.G. (1982) *From Asylum to Welfare* Downsview: National Association for Mental Retardation.
- Smandych, R. (1981) The Rise of the Asylum in Upper Canada, 1830-1875. Dissertation, Simon Fraser University.
- Smandych, R. (1989). The Upper Canadian Experience with Pre-Segregative Control. Dissertation, University of Toronto.
- Suzuki, A. (1995). The Politics and Ideology of Non-Restraint: the Case of the Hanwell Asylum. *Medical History*, 39, 1.
- Suzuki, A. (1991) Lunacy in seventeenth- and eighteenth-century England: analysis of Quarter Sessions records, Part I *History of Psychiatry*, 2, 437 and Part II 3 History of Psychiatry (1992) 29.
- Suzuki, A. (1992) Lunacy in seventeenth- and eighteenth-century England: analysis of Quarter Sessions records, Part II

P. Bartlett/Nineteenth-Century Structures of Confinement, p.23
History of Psychiatry, 3, 29.

Turner, T. (1991). 'Not worth powder and shot': the public profile of the Medico-Psychological Association, c. 1851-1914. In Berrios and Freeman, eds *150 Years of Psychiatry*, London: Gaskell, 1991, 3.

Unsworth, C. (1987). *The Politics of Mental Health Legislation*. Oxford: Clarendon Press.

Unsworth, C. (1993). Law and Lunacy in Psychiatry's 'Golden Age'. *Oxford Journal of Legal Studies*, 13, 479.

Wright, D. (1996). Childlike in his Innocence. In Wright and Digby, eds, *From Idiocy to Mental Deficiency* London: Routledge, 118.

Wright, D. (1994). *A Beam for Mental Darkness: A History of the National Asylum for Idiots, Earlswood, 1847-1886*. Dissertation, Oxford University.